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INTERNATIONAL COMMERCIAL ARBITRATION

Monitoring the legislative implementation of the 1958 New York Convention: progress report

Note by the Secretariat

Introduction

1. The Commission, at its twenty-eighth session in 1995, considered the project of collecting information relating to the legislative implementation in national laws of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958). The project is carried out in cooperation with Committee D of the International Bar Association (IBA).[1]

Purpose of the project

2. The Commission noted that the purpose of the project was in particular to look into the following questions: is the Convention incorporated into the national legal system of the States parties so that its provisions have the force of law; have States parties added to the uniform regime of the Convention provisions, whether pursuant to declared reservations to the Convention or otherwise, which modify the conditions of recognition or enforcement of awards; which requirements for obtaining recognition and enforcement not contemplated in the Convention have been added in national laws.[2]

3. It was stressed at the session that it was not the purpose of the project to monitor individual court decisions applying the Convention. Such an exercise would be beyond the resources of the Secretariat and is not necessary for the project as outlined above; furthermore, case law applying the Convention is being collected and published by other organizations, most notably in the Yearbook of Commercial Arbitration by the International Council for Commercial Arbitration (ICCA).[3]

[1] Official Records of the General Assembly, Fiftieth Session, Supplement No. 17 (A/50/17), paras. 401-404.

[2] Ibid., para. 401.

[3] Ibid., para. 402.

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4. The primary objective of the project is to prepare a note by the Secretariat containing the findings based on the survey of legislation. When the Commission would have the note before it, it may wish to decide whether in addition to such a note any further action by the Commission would be desirable, such as, for instance, the preparation of a guide for the enactment of the Convention.[4]

Collection of information

5. In November 1995, the Secretariat sent to the States party to the Convention a note verbale containing a questionnaire in which the States were requested to answer a series of questions relating to:

(a) the manner in which the Convention gained the force of law in the State (including, e.g., whether the relevant national law refers to, or incorporates, the text of the Convention or whether the implementing legislation paraphrases the text, and whether the method of implementation results in any substantial differences between the implementing legislation and the provisions of the Convention);

(b) the court or authority competent to decide on a request for recognition or enforcement; and

(c) the procedural rules and requirements applicable to a request for recognition and enforcement of an award covered by the Convention (including, e.g., requirements concerning the authentication of the award as required by art. IV of the Convention; fees, levies, taxes or duties to be paid in connection with a request; any time-limit for a request for recognition and enforcement; recourse against a decision refusing to enforce an award or against a decision to grant recognition or enforcement).

6. In February 1996 the Secretariat sent another note verbale to States that had not responded to the first one requesting the information by the end of April 1996.

7. As of 8 May 1996, the Secretariat has received replies to the questionnaire from the following 27 States: Algeria, Argentina, Australia, Austria, Belarus, Cuba, Finland, France, Germany, Holy See, India, Italy, Japan, Kuwait, Mexico, Norway, Peru, Republic of Korea, Singapore, Slovak Republic, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Venezuela.

8. The Commission may wish to call upon the States party to the Convention that have not yet replied to the questionnaire to do so. As of 7 May 1996, 108 States were party to the Convention.

Further work

9. The Commission may wish to request the Secretariat to prepare, for consideration of a future session of the Commission, a note presenting the findings based on the analysis of the gathered information.

[4] Ibid., para. 403.